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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/787,142

02/27/2004

Bruce Elliot Kramer

SOAP1

4632

7590

02/24/2006

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/787,142	KRAMER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Necholus Ogden	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-27-2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Joshi (4,017,574).

Joshi discloses a process for making a multicolored soap bar comprising multicolored soap bars of a variety of colors in a striated or marbled layers (col. 2, lines 25-col. 3, line 21) and antibacterial agents (example 3).

As this reference teaches all of the instantly required it is considered anticipatory.

4. Claims 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Sonnenberg et al (6,673,756).

Sonnenberg et al disclose a multiphase soap comprising two or more phases and each phase may be opaque and comprise different color or dye (col. 21, lines 60-64; col. 26, lines 30-35 and claims 1-5). Sonnenberg et al further teach that said multiphase soap bar comprises an antibacterial components (col. 15, lines 14-42) and further teach that said bar comprises an object for advertising purposes such as a toy of gold or similar materials (col. 21, lines 50-col. 22, line 16).

As this reference teaches all of the instantly required it is considered anticipatory.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 26-30, 34, 38-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi (4,017,574).

Joshi is relied upon as set forth above. Specifically, Joshi does not specifically teach with sufficient specificity each colors in specific layers.

It would have been obvious to one of ordinary skill in the art to disperse the various colors in a specific layers as claimed because Joshi teaches a multicolored bar with variegated or striated regions (see abstract). Further, specific colors or layers have been held that matters relating to ornamentation or aesthetic design changes which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Claims 24-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnenberg et al (6,673,756).

Sonnenberg et al is relied upon as set forth above.

Sonnenberg et al do not teach with sufficient specificity each of the colors in specific layers.

It would have been obvious to one of ordinary skill in the art to disperse the various colors in a specific layers as claimed because Sonnenberg et al teach a multiphase soap bar having two or more phases in different colors (col. 26, lines 30-35). Further, specific colors or layers have been held that matters relating to ornamentation or aesthetic design changes which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

### ***Response to Arguments***

9. Applicant's arguments filed 12-12--5 have been fully considered but they are not persuasive.

Applicant argues that the prior art soap bars do not motivate a child to wash and improve their hygiene and therefore the claims are a functional difference from the prior art of record.

The examiner contends and respectfully disagrees because the prior art of record teaches bars with a variety of colors and layers and one skilled in the art would be motivated to assemble the layers and colors as claimed, in the absence a showing to the contrary. With respect to motivating a child to wash, the examiner contends that this would be an inherent property of the soap bars because as they teach layered soap bars with a plurality of colors in a variety of arrangements, wherein one skilled in the art would expect said soap bars to motivated a child to wash or bathe. With respect to

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improving a chilled hygiene, the examiner contends that the soap bars have cleansing phases, which would clean and improve the hygiene of a child if used as a cleansing personal soap bar. Further, the courts held that reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) (In re Dillon, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991) "it is not necessary in order to establish a prima facie case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant," and concluded that here a prima facie case was established because "[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties."


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nicholas Ogden  
Primary Examiner  
Art Unit 1751

No  
2-21-06